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May 28, 2008

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of ex parte presentation - WC Docket No. 07-245*

Dear Ms. Dortch:

On May 28, 2008, The DAS Forum, a membership section of PCIA–The Wireless Infrastructure Association, met with staff from the Wireline Competition Bureau ("WCB") regarding the above-referenced pole attachments proceeding. The DAS Forum was represented by Jacqueline McCarthy, Director, Regulatory Affairs, PCIA; Michael Saperstein, public policy analyst, PCIA; and undersigned counsel. Attending from WCB were Jeremy Miller from the Industry Analysis and Technology Division; Jonathan Reel, Adam Kirschenbaum, Matt Warner, and Jesse Skinner from the Competition Policy Division; and Albert Lewis, Chief, and Richard Kwiatkowski and Marv Sacks from the Pricing Policy Division.

The DAS Forum's presentation in the meeting was consistent with its comments in this proceeding and followed the attached slide presentation, which was distributed at the meeting.

Sincerely,

WILKINSON BARKER KNAUER, LLP

By: /s/
L. Charles Keller

cc by email: Al Lewis, Richard Kwiatkowski, Marv Sacks, Jon Reel, Adam Kirschenbaum, Matt Warner, Jesse Skinner, Jeremy Miller

Attachment

Pole Attachment Issues for Distributed Antenna Systems (DAS)

Federal Communications Commission
May 28, 2008

the DAS forum
Distributed Antenna Systems
www.thedasforum.org

Overview of the DAS Forum

- Mission:
  - The DAS Forum is a broad-based non-profit organization, dedicated to the development of the distributed antenna system component of the nation's wireless network.
- About the DAS Forum:
  - Founded in 2006, the DAS Forum, a membership section of PCIA, is the only national network of leaders focused exclusively on shaping the future of DAS as a viable complement to traditional macro cell sites and a solution to the deployment of wireless services in challenging environments.
  - DAS Forum members own and manage all of the neutral host and many of the carrier-owned outdoor DAS installations in the U.S.
  - The DAS Forum's membership includes all of the major outdoor DAS infrastructure providers, as well as major carriers, equipment manufacturers, professional services firms.

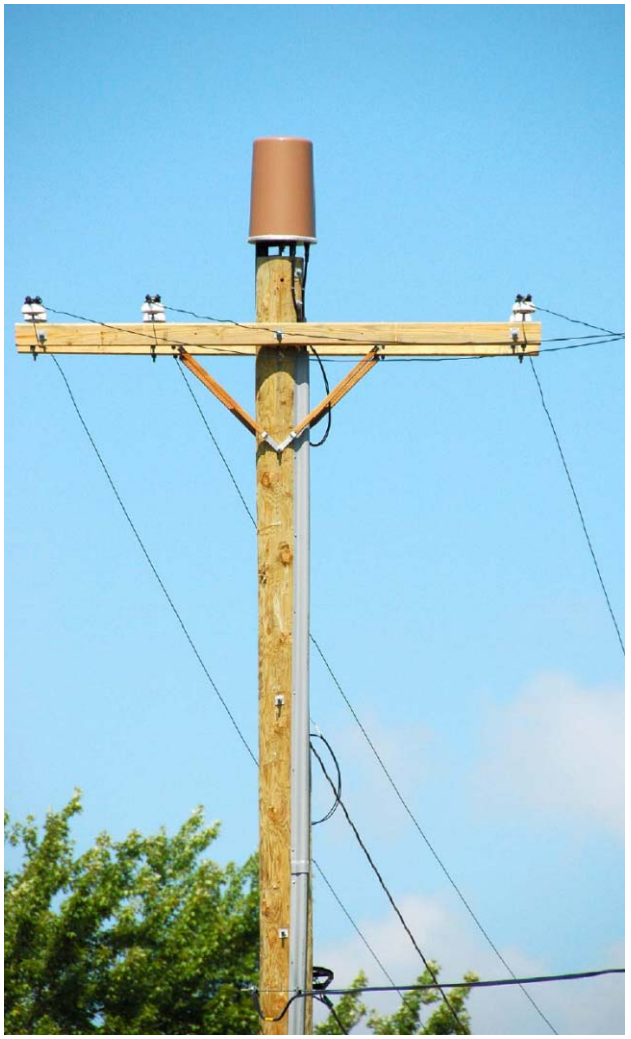
Overview of the PCIA – The Wireless Infrastructure Association

- Founded more than 60 years ago, PCIA is the principal trade association representing the wireless telecommunications and broadband infrastructure industry.
- PCIA members own and manage more than 115,000 wireless telecommunications sites and antenna facilities that support analog, digital and broadband services across the country.
- PCIA supports programs and policies that facilitate the rapid build-out of the national wireless networks, and enable the industries that construct and maintain these networks.
- Members include tower companies, wireless carriers, and service companies. In addition to advocacy, PCIA operates a variety of programs and delivers key services to support its mission:
  - Founded the State Wireless Association Program (SWAP), a nationwide network of state and regional wireless professionals (swaprogram.net)
  - Operates the PCIA Advanced Wireless Services Clearinghouse (awsclearinghouse.com)
  - Is the leading frequency advisory committee for business and industrial PLMRS operators

What is a DAS Attachment?

- A distributed antenna system (DAS) is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally near the clutter level and node installations are compact.
- DAS nodes are remote radiating points interconnected to a base unit (a hub). Typically, node equipment comprises an antenna and a small radio head mounted on existing distributed structures, such as lamp posts or utility poles.
- DAS is a specialized solution where structural, spatial or architectural concerns make it impractical or infeasible to deploy traditional cell sites. DAS networks provide coverage and capacity expansion in dense areas and niche coverage in sensitive locations.
- DAS networks are designed with flexibility in pole top spacing. In most locations, a DAS node can be placed on an adjacent pole top if the desired pole top is unavailable or occupied.
- To ensure that this emerging and unique technology option is available for broadband and emergency communications infrastructure deployment, it is important for the Commission to clarify that established and lawful pole attachment rates, terms and conditions are applicable for DAS.

Examples of Remote DAS Nodes



The FCC Recognizes that Wireless and DAS Attachments Are Vital Assets that Serve the Public Interest

"*Providing wireless carriers with access to existing utility poles facilitates the deployment of cell cites to improve the coverage and reliability of wireless networks in a cost-efficient and environmentally friendly manner. Such deployment will promote public safety, enable wireless carriers to better provide telecommunications and broadband services and increase competition and consumer welfare.*"

Public Notice, DA 04-4046 (2004)

The Current Rate Structure Is Not Working for Wireless Attachers

- In comments, many utility companies dispute the applicability of the telecommunications rate to wireless attachers.
- In practice, some utility companies often offer wireless pole attachment agreements on a “take it or leave it” basis with unlawful rates and unreasonable terms and conditions.
- DAS Forum members have often been offered only unlawful “market rates” *from two to twenty times* greater than the regulated telecommunications rate.
- The Commission’s current rules, which encourage good-faith negotiation, fail in the face of such tactics.

The FCC Should Make It Clear That Wireless Attachers are Entitled to the Telecommunications Rate

- The Supreme Court, federal courts and the Commission all have recognized that "[w]ireless carriers are entitled to the benefits and protections of Section 224."
- Section 224(e)(1): "The Commission shall… prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services." The Commission has recognized that "[t]his language encompasses wireless attachments."
- The Commission should adopt an explicit rule that wireless carriers are entitled to access to utility poles on a non-discriminatory basis at the regulated telecommunications rate, on a per-foot basis.
- Section 1.1409 already prescribes a "per-foot" formula, and the one-foot presumption can readily be rebutted per Section 1.1418. The Commission should clarify that these rules apply to wireless attachments.

The New Wireless Rate Rule Should Explicitly Apply to the Pole Top

- Congress intended existing utility infrastructure to be utilized for the deployment of wireless services to consumers.
- Although the pole has 'only one top', it also has only one middle, and one bottom – each suited and desirable for different purposes (*i.e.*, transmission, cable and other attachments).
- To permit pole owners to charge monopoly rates for any part of the pole is contrary to the statutory purpose of pole attachment regulation.

Rate Issues Are Irrelevant Where Access to the Pole is Denied

- Some utility companies discriminate against wireless attachers not only with respect to rates, but the terms and conditions that allow access in the first instance.
- DAS operators confront many objectionable practices including:
  - Denial of access to pole tops, or space above pole tops for height extensions
  - Blanket denials for pole access under the pretext of “safety” concerns
  - Unreasonable delays in obtaining pole attachment agreements
  - Inordinate delays in make-ready
- *The FCC can remedy these barriers to entry by taking a few simple steps to clarify existing best practices and the law*

DAS Access Issues: Pole-Top Access

- **The FCC should reaffirm and clarify its rules to make it clear that access to poles includes the pole-top**
- There is no statutory limitation on telecommunications carriers' access to poles that would support denying access to the pole top.
  - Utility company per se denials of DAS access to the pole top should be recognized for what they are - clear violations of law

DAS Access Issues: Denials for "Safety" Concerns Are Unfounded

- **The FCC should (1) require all pole owners to comply with NESC Standards and permit NESC-compliant attachments and (2) prohibit pole owners from conditioning access on arbitrary safety requirements that exceed NESC standards.**
- DAS Forum members have safely attached facilities to poles owned by 98 different utility companies without evidence of harm. The DAS Forum is committed to upholding NESC standards and supports all efforts to prevent unauthorized attachments.
- Utility companies themselves use pole-top antennas for internal operations, including SCADA.
- Some utility companies have issued blanket denials of pole access to wireless attachers under the guise of safety concerns.
  - Wireless and broadband deployment in Hawaii and New Jersey have been retarded by recalcitrant utility companies.
  - Some utility companies incorrectly conclude that the Commission has no jurisdiction to regulate safety-related issues.

DAS Access Issues: Pole Access Request Timing

- **The FCC should take affirmative steps to enforce the 45-day deadline by which utility companies must respond to request for access**
- DAS operators often face unreasonable delays in obtaining pole attachment agreements
  - Negotiation periods have extended up to *three years*
  - Many utility companies have succeeded in prohibiting pole access by offering unreasonable attachment agreements and refusing modifications. In these cases, the only recourse attachers have is to challenge the utility company in court, which is expensive and time-consuming

DAS Access Issues: Make-Ready Timing

- **The FCC should (1) establish and enforce reasonable timeframes for the completion of make-ready work and (2) allow DAS operators to hire qualified contractors to perform field surveys and make-ready where the utility cannot or will not meet reasonable deadlines.**
- New York and other states have already recognized the problem of make-ready delay and imposed reasonable timeframes for make-ready completion (e.g., 45 days).
- On average, it takes four to nine months for utility companies to complete make-ready work for DAS members. However, DAS members themselves have been able to complete make-ready in as little as two to three weeks.
- DAS Forum members have also experienced delays of up to six months for simple requests for power.

Contact

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